उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB : HON'BLE SHRI DHIRENDRA MISHRA, J.

M.A. 888 OF 2006

APPELLANT Branch Manager, The Oriental Insurance Co. Ltd., Through Branch Manager, Branch – Ambikapur, Distt. Surguja (CG)

Vs.

RESPONDENTS

1. Nanhu S/o. Karansay, Age about 42 years, Caste – Pando, Occupation – Farmer
2. Srimati Bifaiya Bai, W/o. Nanhu, aged about 40 years, Caste-Pando, Occupation- Household
3. Raghubir S/o. Mohar Singh, Aged about 56 years, Occupation-Owner of Tractor and Farmer, Resident of Village-Dohda, P.O. Mansukh Tah. Baikunthpur, Distt. Korba (CG)

29.06.2007

Shri Sudhir Agrawal, counsel for the appellant.

None appears for respondent No.1 & 2.

Shri A.K.Prasad, counsel for respondent No.3.

Heard.

This appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'Act') is directed against the award dated 30th of January 2006 passed in Claim Case No. 42/2004 by the Additional Motor Accident Claims Tribunal, Baikunthpur, Distt. Korea whereby a sum of Rs. 1,74,500/- has been awarded to the legal heirs of deceased Mangal Sai who died on 23.08.2004 in a motor vehicle accident involving tractor No. CG.16A/0136 and Trolley

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

No. CG.16/0137 owned by respondent No.3 Raghubir Singh and insured by the appellant for the relevant period.

This appeal has been preferred by the appellant/Insurance Company on the ground that the Tribunal was not justified in imposing liability upon the appellant/Insurance Company, as from the evidence available on record it is manifestly clear that the vehicle in question was being used for non-agricultural purposes, whereas it was insured only for agricultural purposes. At the relevant time, deceased Mangal Sai was sitting on the mudguard of offending vehicle-tractor in which no one is permitted to sit except the driver and thirdly that the deceased was a gratuitous passenger.

Learned counsel for the appellant submits that from the evidence of appellant, witness No.2 Dharamjeet it is clear that he alongwith deceased Mangal Sai were sitting on the mudguard of the tractor when the same overturned resulting in the death of Mangal Sai.

Referring to the document of Ex.D-1 it is submitted that the policy was issued under the Kisaan Package Policy for agricultural purposes however the vehicle was being used for transporting of iron bars as is evident from the pleadings in claim petition and First Information Report of Ex.P-1. He further argued that from reply of the owner himself it would be evident that the deceased was not engaged as a labourer with the vehicle however the tribunal ignoring the admission of the owner-respondent No.3 has arrived at the

GRPRJ — FS/246— 2/2007 — 50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

conclusion that the deceased was travelling in the vehicle as a labourer.

Reliance is placed in the matter of ***National Insurance Co. Ltd. Vs. Jagdish & Others*** reported in ***2005 ACJ 1167*** and in the matter of ***Branch Manager, National Insurance Company Ltd., Vs. Ganpathi & Others.*** Reported in ***AIR 2007(NOC) 246 (MAD.)***.

On the other hand counsel for respondent No.3/owner categorically denied that the deceased was travelling in the said vehicle with Amarnath and that the vehicle was being used for transporting of iron bars for the purpose of construction of road. The deceased was not travelling in the said vehicle as labourer nor the vehicle was being used for the commercial purposes. In fact, the vehicle had gone to fetch fertilizer from Baikunthpur, it overturned from culvert in the river where deceased Mangal Sai was taking bath, he came under the trolley of tractor, sustained injuries and died.

Learned counsel for the respondent No.3/owner submitted that he never permitted driver Amarnath to carry any passenger in the tractor and if it is found that the deceased was in fact travelling in the tractor in that case the same was done without express permission of the respondent and therefore, in these circumstances respondent cannot be held for any breach of policy condition.

I have heard learned counsel for the parties and perused the documents and evidence available on record.

58
62

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

After appraisal of evidence and pleadings of the respective parties particularly from the evidence of Dharamjeet who had been examined by the claimant as A.W.-2 it is established that deceased Mangal Sai was in fact, sitting over the mudguard of the tractor at the time of accident and from the reply of respondent No.2 it is also evident that deceased Mangal Sai was not engaged by the owner as labourer of the said vehicle (tractor).

From perusal of the document of Ex.D-1 and statement of Ajaypal Gupta, examined by the appellant it is observed that the vehicle was insured under the Kisaan Package Policy. However, it nowhere mentions that the tractor was insured for agricultural purposes though this witness has stated in his deposition that the tractor was insured for agricultural purpose. However considering the statement of Ajaypal Gupta and the document of Ex.D-1, the same cannot be accepted.

However taking into consideration the document of Ex.D-3 and D-4 which is a certificate of registration of the offending vehicle, it is evident that the sitting capacity of the tractor has been shown as one including driver and considering the reply of owner it is also established that the deceased was not engaged by the owner as labourer.

In the matters of ***Insurance Company Ltd. V. Jagdish & Others*** (Supra), High Court of M.P. while dealing with the identical situation has held that "***the sitting capacity of tractor is only for***

59
63

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

driver and death of the passenger travelling in the tractor is not covered under the Act. From the insurance policy on record it is clear that the tractor was insured as Act insurance and premium for risk of driver is paid and since passenger is not permissible in a tractor, therefore, the insurance company cannot be held liable to indemnify the passenger travelling in a tractor. Dealing Section 149(2)(a) (i) of the Act it has been held that the vehicle was being used in breach of specified condition of policy".

In the matters of ***Branch Manager, National Insurance Co. Ltd.*** (Supra) it is stated that "***plea not substantiated by producing documents viz., pay certificate etc. – Even, driver of tractor has denied fact that deceased was working as a cleaner-it could be said that deceased was travelling as gratuitous passenger-Award of Tribunal fastening liability on Insurance Company to indemnify owner for death of deceased-Liable to be set aside-Owner of tractor held liable to pay the compensation***".

The arguments advanced on behalf of the respondent No.3/owner that the owner never permitted the driver to carry any passenger and therefore if he carried any passenger in the tractor, he did so without express permission of the owner cannot be accepted, in view of the pleadings of the respondent No.3 and evidence available on record.

Relying upon the judgments cited by the appellant this Court is of the opinion that the vehicle in question was being driven by the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

driver in breach of policy condition as the deceased was sitting in the mudguard of the tractor and therefore his status was that of gratuitous passenger. In these circumstances the finding of the tribunal that the deceased was travelling as labourer in the said vehicle is contrary to the evidence available on record and therefore the same cannot be sustained.

In the result the appeal is allowed. The impugned award is modified and the appellant is exonerated from the liability of satisfying the award. The appellant shall be entitled to recover the amount of compensation already paid from the owner of the vehicle i.e. the respondent No.3.

Sd/-
Dhirendra Mishra
Judge